

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 176 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAXD

Versus

KANCHANJANGA INVSTMENT PVT.LTD..

Appearance:

1. INCOME TAX REFERENCE No. 176 of 1995
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad has referred the following questions of law for our opinion in respect of assessment years 1983-84 and 1984-85:-

- (i) Whether, the Appellate Tribunal is right in law and on facts in deleting the addition on account of interest receivable from M/s. Sercon P. Ltd.?
- (ii) Whether, the Appellate Tribunal is right in law and on facts in deleting the addition in respect of the amount of interest receivable from M/s. SMCEPL ?
- (iii) Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow credit of the amount of TDS for calculation of interest u/s.215 although the amount of TDS had not been credited to Central Govt.?

2. We have heard Mr Akil Kureshi learned counsel for the revenue and Mr RK Patel learned counsel for the respondent-assessee.

3. As far as the first two questions are concerned, the learned counsel have invited our attention to the order dated 28-2-2000 in Income Tax Reference No.63 of 1985, order dated 20-9-1999 in Income-tax Reference No. 195 of 1984, order dated 8-1-2000 in Income-tax Reference No. 290 of 1985, order dated 11-1-2001 in Income-tax Reference No.25 of 1988 and the order dated 4-10-2001 in Income-tax Reference No.127 of 1989. Relying on the aforesaid orders in references between the same parties, we send back the case to the Tribunal to pass appropriate orders taking into consideration the observations made in the order dated 20-9-1999 of this Court in Income-tax Reference No.195 of 1984.

4. Coming to question No.3, the learned counsel have invited our attention to the decision of this Court in CIT vs. Ranoli Investment P. Ltd., 235 ITR 433. In the said decision, this Court has held as under:-

"The words "assessed tax" occurring in sub-section (1) of section 21 of the Income-tax Act, 1961, dealing with interest payable by the assessee are to be read in the light of the special meaning given to them under sub-section

(5) of section 215 and accordingly, "assessed tax" would mean not the full amount of the assessed tax determined on the basis of the regular assessment, but the amount reduced therefrom to the extent of tax deductible in accordance with the provisions of sections 192 to 194, 194A, 194C, 194D and 195 so far as it related to income subject to advance tax.

The words "reduced by the amount of tax deductible" which appear in sub-section (5) of section 215 also occur in clause (iii) of section 209 (1)(a) dealing with computation of advance tax. The amount of tax deductible in accordance with section 194A would obviously mean the tax as was required to be deducted in respect of the interest income at the time of credit to the account of the payee or payment whichever is earlier.

The words "at the time of credit of such income to the account of the payee" in section 194A would take within their sweep, the interest debited to "interest account" or any other nominal account when the debit is for a specific amount calculated with reference to the deductor's liability to a particular creditor in accordance with the terms and conditions of the loan. The time of deduction would be when the interest is credited. The liability of the deductor would arise for failure to make deduction at the time of credit notwithstanding that it came to be made later on at the time of actual payment. Deduction made at such belated stage of payment, would not be "tax deducted at source" properly so-called and such subsequent deduction even when deposited with the Government, cannot be treated as tax deducted at source.

On a combined reading of sections 190, 191, 194A, 198, 199, 200, 202, 203 and 205, it emerges that as soon as the tax is actually deducted at source by the person responsible to make payment, the liability of the assessee to pay that tax gets discharged and it is for the person who has deducted the tax at source to deposit the same with the Government. If the tax is not so deducted, it remains payable by the assessee direct under section 191 of the Act.

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That the Tribunal was right in holding that the tax deductible at source should be reduced from the tax determined on the basis of regular assessment and thereafter, the liability to pay interest should be calculated under section 215 of the Income-tax Act, 1961."

5. Following the aforesaid decision of this Court, our answer to question No.3 is in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-